



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Professional Performance Development Group, Inc.

File: B-252322

Date: June 9, 1993

A.M. Lecea Schonfeld for the protester.
Bobby G. Henry, Jr., Esq., and Dorothy D. Wilcox, Esq.,
Department of the Army, for the agency.
M. Penny Ahearn, Esq., and John M. Melody, Office of General
Counsel, GAO, participated in preparation of the decision.

DIGEST

1. Protest against technical evaluation is denied where agency reasonably downgraded protester's proposal, and rated it unacceptable under single most important subfactor, due to lack of specific information on each proposed instructor, as required by the solicitation.
2. Allegations that solicitation did not include certain required provisions and contained improper specifications is dismissed as untimely where not raised prior to closing date for receipt of initial proposals, or prior to next closing date after inclusion of provisions in solicitation.
3. Allegation that discussions were inadequate is untimely where not filed within 10 working days after debriefing during which protester learned information on which argument is based.

DECISION

Professional Performance Development Group, Inc. protests the award of a contract to the incumbent contractor, Nonpublic Educational Services, Inc., under request for proposals (RFP) No. DAKF49-92-R-0019, issued by the Department of the Army. Professional Performance principally protests the evaluation of its proposal.

We deny the protest in part and dismiss it in part.

The solicitation, issued on a total small business set-aside basis, sought offers to provide a minimum of 16 instructors for a special operations medical sergeants course at Fort Sam Houston, Texas. Award was to be made on the basis of the best value to the government. The solicitation notified offerors that of the two evaluation

factors, quality was substantially more important than price. The quality subfactors listed in the solicitation were technical quality, quality control, and management quality, with technical quality being approximately three times more important than quality control and management quality, which were of equal importance. Technical quality, the evaluation of which is at issue here, included instructor qualification experience and subject matter expertise requirements. The solicitation provided that price would not be scored, but would be evaluated using price analysis techniques, with its importance increasing as the quality difference between proposals decreased.

The agency received initial proposals from only the protester and the awardee. After evaluation, the agency determined that neither proposal met RFP requirements that all instructors have (1) 2 years of instructor experience; (2) 3 years of special operations medical experience; and (3) military medical supply experience. The contracting officer, after reviewing these requirements with the using activity, determined that the three requirements in fact were unnecessary. Amendment No. 0003 thus was issued to eliminate the second (special operations medical experience) and third (military medical supply experience) requirements, and to change the 2 year instructor experience requirement to one of the elements of instructor subject matter expertise.

As a result, the technical quality subfactor, as amended, consisted of instructor subject matter expertise, which was to be demonstrated through one or more of the following solicitation sub-subfactors listed in descending order of importance (with number 1 slightly more important than 2, and 2 substantially more important than 3 or 4, which were equal: (1) special operations medical sergeant military occupational skill or equivalent; (2) licensed practical nurse or paramedic, certified by either the Texas Department of Health or the national register of emergency medical technicians (EMT); (3) EMT basic or EMT intermediate certification; and (4) instructional proficiency of previous successful instruction experience in the Army Training and Doctrine Command, Army Medical Department School, or similar subject matter institution for 2 out of the last 10 years, with experience including testing, grading, and record keeping procedures. In connection with the information to be submitted in this area, the RFP instructed offerors that their quality proposal should consist of "a narrative and supporting data that address all technical requirements contained in the proposal," including the "expertise possessed by each proposed instructor."

The agency received revised proposals from the awardee and the protester. Nonpublic Educational received an evaluation

(quality) score of 70 (of 100 possible) points and offered the low price of \$3,054,000. Professional Performance received a score of 45 and offered a price of \$3,140,367, \$86,367 higher. Under the technical quality subfactor, Professional Performance's proposal received 9 out of a possible 60 points. Professional Performance was rated unacceptable in this area due to the agency's determination that the firm's proposal contained insufficient information on its proposed instructors to show compliance with the RFP's instructor expertise requirements. In comparison, Nonpublic Educational's proposal received 30 points in this area. (Under the remaining two subfactors, quality control and management quality, the evaluation of which is not at issue, Professional Performance received 36 out of a possible 40 points, and Nonpublic Educational received all 40 points.) Since Nonpublic Educational's proposal was the highest-rated and lowest-priced, the Army made award to the firm on December 23, 1992.

Professional Performance challenges the evaluation of its proposal as unacceptable under the technical quality subfactor and also raises a number of untimely arguments.

TECHNICAL QUALITY EVALUATION

In reviewing a technical evaluation, we consider whether it was reasonable and in accord with the evaluation criteria listed in the solicitation. Information Sys. & Network Corp., B-237687, Feb. 22, 1990, 90-1 CPD ¶ 203; United HealthServ. Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. Based on our review of the record, we find that the evaluation was proper.

The protester's proposal was downgraded most significantly under the first three of the four technical quality sub-factors, i.e., special operations medical sergeant, licensed nurse/paramedic, and EMT experience, the first two of which were weighted most heavily. The downgrading was based on the absence of the specific instructor experience information required. The following is representative of the instructor information included in Professional Performance's proposal:

*Incumbent instructor staff will be given first priority in the selection process of the 16 instructors required to participate in the contract. The recommendation of the incumbent project manager will play a key role in this process. If vacancies should exist, PPDG has established a resume bank of qualified instructor candidates to fill these gaps. A preliminary field of ten has been selected as the best candidates to complement the expected retention of

the incumbents. PPDG will insure that all instructors meet the personnel standards and qualifications as outlined in the statement of work by carefully screening each candidate using our military and civilian educational facility experience and knowledge of U.S. Army training standards. Once the contract is awarded, the incumbent project manager, if he/she should decide to stay, will be consulted on the final selection for new or replacement instructors."

"[I]n order to accommodate the increased requirement for instructors as well as allow for incumbents who choose to leave or may not be chosen for retention, qualified resumes are on file. The only limitation with presenting these resumes is that the qualified individuals are currently employed elsewhere and considering that this contract is not due to begin until January 1993, it is difficult at best to project their availability three months from now."

The firm also submitted an instructor qualifications checklist, which was to be used to determine compliance with the solicitation requirements.

The Army considered this information insufficient to establish that the firm proposed the minimum number of instructors with expertise under the first three technical quality sub-subfactors. Specifically, the evaluators determined that the firm's general plan to hire incumbent instructors, and the described resume bank of available instructors, did not satisfy the RFP's call for specific information, and was inadequate to insure staffing requirements would be met. Consequently, the firm's proposal was assigned 0 out of 51 possible points for the first three technical quality sub-subfactors.

Professional Performance argues that the agency should have "assume[d] that [we were] sincere about hiring" qualified personnel, either incumbent or otherwise, based on the firm's described resume bank and sample checklist for selecting instructor candidates. Additionally, the protester argues that because all of the other parts of its proposal were rated outstanding, the agency should have assumed that the technical quality portion of the firm's proposal was also outstanding.

Contrary to the protester's apparent understanding, an agency may not base its evaluation of a proposal on assumptions. Rather, the technical evaluation of a proposal generally may be based only on information contained in it, and an offeror runs the risk of having its proposal rejected

if the proposal submitted is inadequately written, i.e., if it does not establish that what is proposed will meet the government's needs. Research Analysis, B-242836.4, Oct. 29, 1991, 91-2 CPD ¶ 387.

Here, the protester's proposal was inadequately written. While the protester asserts that it submitted the best available information regarding its proposed instructors, the fact is that it submitted no information at all regarding specific instructors. The information submitted by the protester is generally concerned with the firm's selection process and does not demonstrate the availability of specific proposed individuals who meet the RFP's instructor expertise requirements. The protester did not submit resumes, letters of commitment from incumbent or other potential instructors, narratives of qualifications, or any other specific information about specific individuals. Based on Professional Performance's failure to submit any "supporting data" on the "expertise possessed by each proposed instructor," as required by the solicitation, the unacceptable rating of the firm's proposal in this area was reasonable.¹

The protester maintains that the agency failed to adequately describe what instructor information was to be provided for evaluation purposes. In this regard, the protester maintains that the agency's unwillingness to answer in writing certain written questions the firm posed "made us technically unacceptable."

The solicitation provisions concerning instructor expertise were sufficiently descriptive to put offerors on notice of the information requirements and how proposals would be evaluated in this area. While the solicitation essentially left offerors free to select the optimal method of presenting the required instructor information, the provisions requesting "narrative and supporting data" concerning the "expertise possessed by each proposed instructor" more than adequately conveyed to offerors the need to submit detailed information on each proposed instructor.

Beyond the RFP provisions, it appears the agency imparted further information to the protester in orally responding to its questions. These questions included the following:

¹We note that, contrary to the protester's belief, its proposal was not rated unacceptable for failure to unequivocally state that it would hire the incumbent instructor staff. Rather, it was the failure to submit sufficient specific information on the expertise of proposed instructors, incumbent or otherwise, that led to the unacceptable rating.

(1) "Do you expect submittal of instructor candidates and how they each meet the requirements?" and (2) "As our plan is based on maintaining qualified incumbent staff to the greatest extent, will we be disqualified if we only show how we plan to screen and qualify instructors?" According to the agency, the contracting officer orally answered these questions by referring the protester to the solicitation. Additionally, the contracting officer states she "explained [to the protester] that the proposal should contain the information requested for each individual as stated in [the solicitation's instructions]" and "read portions of [the instructions] . . . concerning each of the areas considered in subject matter expertise" and "reminded [the protester] that the evaluators would need sufficient information to rate the qualifications of each individual proposed instructor for the areas listed in section M, which were the same [as] those listed in [the instructions] with various weights assigned to each." We fail to see how the basic informational requirements could have been made any clearer. Even if the agency could have been more specific, it was not required to "spoon feed" offerors by explaining in minute detail what type of information needed to be presented in an acceptable proposal. See John W. Gracey, B-228540, Feb. 26, 1988, 88-1 CPD ¶ 199.

UNTIMELY ARGUMENTS

Professional Performance complains that the RFP, as amended, omitted certain provisions required by the Federal Acquisition Regulation, that certain solicitation provisions were restrictive of competition, and that the instructor requirements changes in amendment No. 0003 indicate bias in favor of the incumbent. Our Bid Protest Regulations require that protests based upon alleged solicitation improprieties which are apparent from the face of the solicitation be filed prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1993); see Hudson Defense Sys., Inc. et al., B-244522 et al., Oct. 24, 1991, 91-2 CPD ¶ 368. This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but were subsequently incorporated into the solicitation by amendment; protests of such improprieties must be filed not later than the next closing time set for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1); Servicio Int'l de Proteccion Baker, S.A., B-241670, Jan. 22, 1991, 91-1 CPD ¶ 64. Since these arguments were not raised until after award, they are untimely and will not be considered.

The protester also contends that discussions should have been held on the evaluated instructor expertise deficiencies in its proposal. Protests other than alleged solicitation improprieties must be filed not later than 10 days after the basis of the protest is known or should have been known,

whichever is earlier. 4 C.F.R. § 21.2(a)(2). Additionally, each new protest ground, such as those submitted in comments to the agency report on the protest, must independently satisfy the timeliness requirements of our Regulations. RRRS Enters., Inc., B-241512 et al., Feb. 12, 1991, 91-1 CPD ¶ 152. The protester should have been aware of this argument from the information furnished at the debriefing held on January 29. Because the firm's protest on this matter was not filed until 2 months later, in its April 2 comments on the agency report, it also is untimely.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel